

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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In re:	:	
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THE FINANCIAL OVERSIGHT AND	:	PROMESA
MANAGEMENT BOARD FOR PUERTO RICO,	:	Title III
	:	
as representative of	:	Case No. 17-BK-3283 (LTS)
	:	
THE COMMONWEALTH OF PUERTO RICO <i>et al.</i> ,	:	(Jointly Administered)
	:	
Debtors. ¹	:	
	X	
In re:	:	
	:	
THE FINANCIAL OVERSIGHT AND	:	PROMESA
MANAGEMENT BOARD FOR PUERTO RICO,	:	Title III
	:	
as representative of	:	Case No. 17-BK-3566 (LTS)
	:	
THE EMPLOYEES RETIREMENT SYSTEM OF THE	:	
GOVERNMENT OF THE COMMONWEALTH OF	:	
PUERTO RICO,	:	
	:	
Debtor.	:	
	X	

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

**URGENT JOINT MOTION TO MODIFY ORDER REGARDING
STAY AND MANDATORY MEDIATION WITH RESPECT
TO CERTAIN ISSUES RAISED IN CERTAIN CONTESTED MATTERS AND
ADVERSARY PROCEEDINGS RELATED TO THE BONDS ISSUED
BY THE EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Official Committee of Unsecured Creditors (the “Creditors’ Committee”),² the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “Retiree Committee” and, together with the Creditors’ Committee, the “Committees”), the Financial Oversight and Management Board for Puerto Rico (the “FOMB”), the Special Claims Committee of the Financial Oversight and Management Board for Puerto Rico (the “SCC”), the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and, together with the FOMB and the SCC, the “Government Parties”), certain groups of ERS bondholders represented by Jones Day and White & Case LLP (the “ERS Bondholder Groups”), and The Bank of New York Mellon, as Fiscal Agent for the ERS bonds (the “Fiscal Agent” and, together with the ERS Bondholder Groups, the Committees, and the Government Parties, the “Parties”) hereby file this *Urgent Joint Motion to Modify Order Regarding Stay and Mandatory Mediation with Respect to Certain Issues Raised in Certain Contested Matters and Adversary Proceedings Related to the Bonds Issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico* (the “Motion”). In support of this Motion, the Parties respectfully state as follows:

² The Committee is the official committee of unsecured creditors for all Title III Debtors, other than PBA and COFINA.

BACKGROUND

1. On July 24, 2019, the Court entered the *Order Regarding Stay Period and Mandatory Mediation* [Docket No. 8244] (the “Stay Order”) staying certain adversary proceedings and contested matters and ordering mandatory mediation.

2. Since that date, the Parties have participated in discussions facilitated by the Mediation Team regarding the scheduling of certain ERS matters.

3. On October 7, 2019, the Court entered its order [Docket No. 8818] approving initial objection procedures (the “Initial Objection Procedures”)³ with respect to the following matters (collectively, the “Claim Objections”):

- (a) the objections filed by (i) the Creditors’ Committee, each dated March 12, 2019 [Docket Nos. 5580 and 5586] (the “Creditors’ Committee’s Objections”) and (ii) the Retiree Committee, dated April 23, 2019 [Docket No. 6482] (the “Retiree Committee’s Objection” and, together with the Creditors’ Committee’s Objections, the “Committees’ Objections”) to claims filed by certain holders of bonds (“ERS Bonds”) issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”);
- (b) the objection filed by the FOMB, dated May 22, 2019 [Docket No. 7075] (the “FOMB Objection”);
- (c) any Additional Claim Objections; and
- (d) count one of each complaint (the “Count One Allegations”) filed in the adversary proceedings commenced by the SCC and the Creditors’ Committee [Adv. Nos. 19-355, 19-356, 19-357, 19-358, 19-359, 19-360, and 19-361] (the “ERS Clawback Litigation”).

4. The Initial Objection Procedures provide, among other things, that parties in interest, including ERS bondholders (with the exception of certain Deemed Participants), that wish to participate in the litigation of the Claim Objections must file a Notice of Participation by

³ Capitalized terms used but not defined in this Motion have the meanings set forth in the Initial Objection Procedures.

November 18, 2019. The Initial Objection Procedures did not set forth a schedule for discovery or briefing of the matters raised in the Claim Objections.

RELIEF REQUESTED

5. By this Motion, the Parties jointly request that the Court modify the Stay Order to allow for resolution of the following issues: (i) the *ultra vires* challenge to the enforceability of the ERS Bonds (“Ultra Vires Issue”) raised in the Committees’ Objections and the Count One Allegations of the ERS Clawback Litigation;⁴ and (ii) issues regarding the scope of the ERS Bondholders’ liens (the “Lien Scope Issues”) raised in Adversary Proceeding Case Nos. 19-366 and 19-367 (the “ERS Lien Litigation”), Parts III, IV, V, and ¶¶ 94-97 of Part VI of the Retiree Committee’s Objection, and Part I.A.i (i.e., ¶¶ 63-67) of the FOMB Objection. The remainder of the Retiree Committee’s Objection and the FOMB Objection shall remain stayed until the United States Court of Appeals for the First Circuit enters a decision in Case Nos. 19-1699 and 19-1700 (consolidated for briefing and argument). Upon entry of the First Circuit’s decision, the Parties shall meet and confer to discuss the schedule for discovery and briefing for the remainder of the Retiree Committee’s Objection, the FOMB Objection, and any Additional Claim Objections of the Creditors’ Committee with respect to such remaining issues.

⁴ The Parties jointly request that the stay imposed by the Stay Order be lifted for the Count One Allegations of the ERS Clawback Litigation (Adversary Proceeding Nos. 19-355, 19-356, 19-357, 19-358, 19-359, and 19-361) as to the ERS Bondholder Groups that file appearances and answer the complaint(s) in accordance with the schedule in ¶ 6. For the avoidance of doubt, the stay imposed by the Stay Order will remain in effect with respect to all defendants other than the ERS Bondholder Groups. To the extent any of these defendants in the ERS Clawback Litigation wishes to become a Participant with respect to the Ultra Vires Issue, such defendant must file a Notice of Appearance in accordance with the Initial Objection Procedures. Such Notice of Appearance may identify the defendant via pseudonym, in accordance with the *Order Clarifying Effect of Prior Orders and Establishing Notice and Objection Process Regarding Disclosure of Confidential Information* [Docket No. 8797] (the “Notice Order”). If any party or its counsel is unsure of the pseudonym allocated to the party in the ERS Clawback Litigation, they are encouraged to contact counsel to the SCC. *See* Notice Order, paras. 3-4.

6. The Parties have agreed to the following schedule for discovery and briefing for the Ultra Vires Issue and the Lien Scope Issues:⁵

Deadline for the defendants in the ERS Lien Litigation to answer the complaints and file counterclaims	10/25/2019
Deadline for responses to Ultra Vires Issue raised in the Committees' Objections	10/25/2019
Deadline for the ERS Bondholder Groups to answer the complaints and file counterclaims for the Count One Allegations of the ERS Clawback Litigation	10/25/2019
Deadline for the plaintiffs to answer the counterclaims (if any) filed in the ERS Lien Litigation and the ERS Clawback Litigation	11/1/2019
Rule 26 Disclosures	11/1/2019
Fact discovery commences	11/1/2019
Deadline for serving written discovery	11/1/2019
Responses to document requests	11/22/2019
Responses to interrogatories / RFAs	12/3/2019
Deadline for any motions to compel	1/3/2020
Deadline for completion of fact discovery	2/3/2020
Disclosure of experts (if any) and a summary of the subjects about which they will offer opinions	2/3/2020
Service of expert reports (if any)	2/17/2020
Disclosure of rebuttal experts and service of rebuttal expert reports (if any)	3/2/2020
Deadline for completion of expert depositions (if any)	3/16/2020
Deadline for filing motions for summary judgment and declarations in support	4/6/2020
Deadline for Participants to file joinders in the motions for summary judgment on the Ultra Vires Issues	4/13/2020
Deadline for filing oppositions to summary judgment briefs and declarations in support	5/6/2020
Deadline for Participants to file joinders in oppositions to the summary judgment briefs on the Ultra Vires Issues	5/13/2020
Deadline for filing reply briefs in support of motion for summary judgment and declarations in support	5/20/2020

⁵ If the Court does not enter an order unstaying the relevant contested matters and adversary proceedings by October 25, 2019, the Parties agree that the answers, counterclaims, and responses contemplated by this schedule will be filed upon entry of the Court's order. The Parties will nonetheless serve copies of those pleadings to opposing counsel pursuant to the schedule.

7. A copy of the order granting this Motion will be (a) served on all defendants in the ERS Lien Litigation and the ERS Clawback Litigation, (b) served on all Participants, and (c) posted on the ERS Objection Website.

8. All parties reserve all rights with respect to scheduling regarding the *Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [Docket No. 8765], or any subsequent plan filed by the FOMB, and any disclosure statement(s) with respect to same.⁶ All parties further reserve their rights to seek to modify the agreed schedule for resolution of the Ultra Vires Issue and Lien Scope Issues upon an appropriate showing.⁷

9. The Government Parties and the Committees believe that the appointment of a limited scope committee to address issues unique to individual ERS bondholders is not necessary at this time, and reserve all rights to oppose the appointment of such a committee and/or to object to the scope of such a committee. The ERS Bondholder Groups and the Fiscal Agent take no position on whether the appointment of such a committee is necessary, but believe that if such a committee is appointed, it should be an official committee with fiduciary obligations owing to all ERS Bondholders. 11 U.S.C. § 1102; 48 U.S.C. § 2161. The Parties agree to revisit this issue with the Mediation Team after the earlier of (i) the First Circuit Court of Appeals ruling on the pending appeals concerning section 552 of the Bankruptcy Code (Case Nos. 19-1699 and 19-1700), or (ii) the ERS Bondholder Groups publicly indicating their support for a plan of adjustment filed by the Oversight Board.

⁶ Without limiting the foregoing, the ERS Bondholder Groups and the Fiscal Agent specifically reserve their right, if any, to oppose any schedule proposed by the FOMB or any other party that would not permit completion of appeals of any decision related to the Ultra Vires Issue and the Lien Scope Issues prior to the occurrence of the effective date of such plan or plans of adjustment.

⁷ Without limiting the foregoing, the ERS Bondholder Groups and the Fiscal Agent reserve their right, if any, to seek to expedite the agreed schedule for resolution of the Ultra Vires Issue and Lien Scope Issues in light of any schedule entered with respect to the ERS or Commonwealth plan process.

10. Pursuant to Paragraph I.H of the Case Management Procedures, the Parties hereby certify that they have carefully examined the matter and concluded that there is a true need for this Urgent Supplement; have not created the urgency through any lack of due diligence; have made a bona fide effort to resolve the matter without a hearing; and have made reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court.

REQUEST FOR EXPEDITED RELIEF

11. The Parties request that the Court grant the Motion within the next 7 days without holding a hearing. The Parties believe this expedited timeframe is appropriate given the widespread consensus in support of the Motion and the importance of resolving the Claim Objections on a timely basis, and is consistent with the litigation schedule proposed herein, under which the first deadlines occur on October 25, 2019.

NOTICE

12. Notice of this Motion has been provided to the following entities, or their counsel, if known: (i) the U.S. Trustee; (ii) the Office of the United States Attorney for the District of Puerto Rico; (iii) the Financial Oversight and Management Board for Puerto Rico, (iv) the Puerto Rico Fiscal Agency and Financial Advisory Authority; (v) the Official Committee of Retired Employees of the Commonwealth of Puerto Rico; (vi) the insurers of the bonds issued or guaranteed by the Debtors; (vii) counsel to certain ad hoc groups of holders of bonds issued or guaranteed by the Debtors; (viii) holders of ERS bonds who are parties to any group that has filed a statement under Bankruptcy Rule 2019; (ix) The Bank of New York Mellon, as Fiscal Agent for the ERS Bonds; (x) all parties that have filed a notice of appearance in the above-captioned Title III cases; (xi) all defendants in the ERS Clawback Litigation and the ERS Lien Litigation; and (xii) all Participants.

NO PRIOR REQUEST

13. No previous request for the relief requested herein has been made to this or any other court.

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WHEREFORE, the Parties respectfully requests that the Court enter the proposed order, substantially in the form attached hereto as **Exhibit A**, and grant the Parties such other relief as is just and proper.

Dated: October 18, 2019

By: /s/ Luc A. Despins

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